IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 304 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
AND
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

PROFESSIONAL INFORMATION SYSTEMS & MANAGEMENT

Appearance:

1. INCOME TAX REFERENCE No. 304 of 1992
MRS M.M.BHATT for Appellant.
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 19-20/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MS.JUSTICE H.N.DEVANI)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following question of law for the opinion of this Court under Section 256(1) of the Income Tax Act,1961 (the Act) at the instance of the Commissioner of Income Tax, Baroda for the Assessment Year 1983-84 :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee company which provided computer services to other concerns was an industrial undertaking engaged in the business of manufacture or production and thus eligible for investment allowance u/s.32-A on the cost of computer ?"

2 The assessee company was engaged in the business of providing computer services to various concerns and received income by way of service charges for such activity. During the year under consideration the assessee company purchased computer and claimed investment allowance on the same under Section 32A of the Act. The Income Tax Officer disallowed the claim after recording a finding that the computer was an office appliance and the assessee could not be said to have been engaged in the business of manufacture or production of any article or thing.

3 The assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals). The findings of the ITO were reversed by the CIT(A) who accepted the submission of the assessee that it was engaged in the business of manufacturing and providing "data systems" after using the processing machines and thus it was engaged in the business of manufacturing of articles or things. The CIT(A) noted the fact that the assessee had been registered as small scale industry by the Director of Industries. Relying upon the decision of the Bombay High Court in case of CIT Vs. IBM World Trading Corporation, (1981) 130 ITR 739 as well as the decision of Bombay Bench of the Tribunal in the case of Rajeev H.Arora, reported in the Bombay Chartered Accountant's Journal of December 1984 at page 679, the CIT(A) held that the computer is a "plant" and that the assessee company is engaged in the business of manufacture or production of articles or things.

4 The revenue preferred an appeal before the Income

Tax Appellate Tribunal, being ITA No.2094/Ahd/1988. For the reasons stated in its order dated 25/11/1991, the Income Tax Appellate Tribunal upheld the order of the CIT (Appeals). The Tribunal was of the opinion that the issue in controversy was squarely covered by the decision of the Bombay High Court in case of International Computers Ltd. 131 ITR 1 as well as the Tribunal's decision in case of Rajeev H.Arora (supra).

5 Though served none appeared for the respondent.

6 Mrs.M.M.Bhatt, learned Standing Counsel for the revenue submitted that the assessee was not entitled to claim investment allowance on computers under Section 32A of the Act. It was contended that the activity of the assessee of providing computer services could not be treated as manufacturing activity. It was argued that computers are appliances mainly used for office purposes and could therefore, be classified only as an office appliance.

7 In support of her contentions the learned Counsel has placed reliance upon the decision of the Bombay High Court, in the case of Commissioner of Income Tax Vs. R.Shroff Consultants P.Ltd.(1999) 238 ITR 1018. In the said case the assessee company was engaged in the consultancy business and as a part of the said business, it undertook data processing work which was done with the help of electronic computers. The Court held that the assessee could not claim itself to be an industrial undertaking. It was held that only because the assessee was using computers in its consultancy business it cannot be regarded as an industrial undertaking. The Court observed that no article or thing is manufactured or produced by the company and the preparation of statements on the basis of the data processed by the assessee cannot amount to manufacture or production of any article or thing. The Court relied upon the decision of the Supreme Court in case of CIT Vs. N.C.Budharaja (1993) 204 ITR 412 and in the facts of the said case it was difficult to say that the assessee, who was a consultancy firm was engaged in the manufacture of articles or things. The Court held that the statements, etc., prepared by the assessee with the help of the computer containing the result of data processing cannot be regarded as articles or things within the meaning of these words used in Section 32A of the Act. It was held that the assessee was not an industrial undertaking engaged in the business of manufacture or production of any article or thing and was therefore, not entitled to investment allowance under Section 32A of the Act.

8. In the absence of any appearance on behalf of the respondent, Mrs.Bhatt, learned Counsel for the revenue has very fairly drawn the attention of the Court to the following decisions wherein issues similar to the issue involved in the present case have been dealt with.

8.1 In the case of Commissioner of Income Tax Vs. I.B.M.World Trade Corporation, (1981) 130 ITR 739, the question before the Bombay High Court was as to whether E.A.Machines (now called Data Processing Machines) were office appliances not eligible for allowance of development rebate under section 33(1) of the Act. The Court held that the word "appliances" is qualified by the word "office" in Section 33 and those words as they are used in section 33 will, therefore, have to be construed in the context of appliances which are generally used in an office as an aid or a facility for the proper functioning of the office. The Court observed that a computer system or an electronic data processing system is physically a collection of electromechanical and electronic components and devices assembled in metal cases (modules) and cabinets. These contain switching and communication components such as transistors, diodes, capacitors, resistors and integrated circuits, all combined into various types of circuitry, together with memory systems, power supplies , delay lines and various types of magnetic media such as tapes and wires for carrying and transforming data and information, as coded, into instructions and computations. The Court held that in view of the varied functions which the "system" is capable of performing, data processing machines cannot be classified as "office appliances" and are eligible for allowance of development rebate under section 33(1) of the Act.

8.2 In the case of Commissioner of Income Tax Vs. International Computers Ltd. (1981) 131 ITR 1, the Bombay High Court followed its earlier decision in the case of CIT Vs.I.B.M.World Trade Corporation (supra). The Court held that data processing machines were not office appliances and were entitled to the allowance of development rebate under section 33(1) of the Act.

8.3 In the case of CIT v. Tarun Commercial Mills Ltd.(1985) 151 ITR 75(Gujarat), the question before the Court was as to whether the air-conditioner and electric fans admittedly installed in the office of the mill-company can be said to be plant or machinery entitled to depreciation and development rebate under s.32 and s.33 of the I.T.Act,1961. This High Court

referred to the decision of this Court in CIT v.Elecon Engineering Co.Ltd. (1974) 96 ITR 672 wherein the Court had considered at length as to what would be the essential characteristics of an article or object so as to fall within the meaning of the term "plant and machinery". The Court observed as follows :

> "On reviewing these authorities, a broad consensus emerges from which the essential characteristics of plant can be clearly gleaned. The word 'plant', in its ordinary meaning, is a word of wide import and in the context of section 32 it must be broadly construed. It includes any article or object fixed or movable, live or dead, used by a businessman for carrying on his business. It is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. It would not, however, cover the stock-in-trade, that is, goods bought or made for sale by a businessman. It would also not include an article which is merely a part of the premises in which the business is carried on as distinguished from a part of the plant with which the business is carried on. An article to qualify as plant must furthermore have some degree of durability and that which is quickly consumed or worn out in the course of a few operations or within a short time cannot properly be called "plant". But an article would not be any the less plant because it is small in size or cheap in value or a large quantity thereof is consumed while being employed in carrying on the business. In the ultimate analysis the inquiry which must be made is as to what operation the apparatus performs in the assessee's business. The relevant test to be applied is : Does it fulfil the function of plant in the assessee's trading activity ? Is it the tool of the taxpayer's trade ? If it is, then it is plant no matter that it is not very long-lasting or does not contain working parts such as a machine does and plays a merely passive role in the accomplishment of the trading purpose".

The Court held that in the ultimate analysis, as pointed out by the Division Bench in Elecon Engineering's case the inquiry must be as to what operation the apparatus performed in the assessee's business and the relevant test is : Does it fulfil the function of plant in the assessee's trading activity ? Is it a tool of the

taxpayer's trade ?

The Court considered as to what is precisely the import of the term"office appliances" and observed as follows :

"It is difficult to lay down a strait jacket formula for determining the nature of the articles, but the initial test for determining the nature of the article is what is known as the test of common or popular parlance as understood by a person dealing with those articles. The second test would be the principal and primary use for which the goods are required and for which the same are capable of being used. The third test is what is known as the commercial test in things how the article or goods are known in the world of "trade and commerce". On application of any of these tests we find it difficult to agree that the electrical fans and air-conditioners would be office appliances. By no stretch of imagination in the world of "trade and commerce" or in popular parlance they can be said to be office appliances or equipments".

The Court held that air-conditioners and electric fans installed in the office premises of the assessee are plant entitled to depreciation and development rebate.

8.4 In the case of CIT vs. Oswal Data Processors, (1997) 223 ITR 735, the assessee claimed investment allowance on computers and deduction under section 80J of the Act, on the basis that it was carrying on the business of data processing with the help of computers. The Madhya Pradesh High Court referred to the decision of the Government of India communicated to the Director, Small Industries Service Institute, Ministry of Industry, Government of India, Indore, which reads as follows :

"In view of the sophisticated and specialised type of operations involved in software servicing and data processing, it has been decided to recognise this as an industrial activity. As such small-scale units engaged in this activity are eligible for facilities and concessions available to the small-scale industries under the Small Industries Development Programme. Units engaged in software servicing and data processing can, therefore, be registered as a small-scale industry provided they fulfil the necessary conditions of investment on machinery and

equipment, etc."

The Court agreed with the view taken by the Gujarat High Court in case of CIT Vs. Ajay Printery Private Limited. (1965) 58 ITR 811 and held that the assessee was entitled to investment allowance on the computers installed and also to deduction under section 80J of the Act.

8.5. In the case of CIT v. Steel Tubes of India Ltd.(No.1) (1997) 228 ITR 39, the Madhya Pradesh High Court relied upon the decisions rendered in the case of CIT v. Shaw Wallace and Co.Ltd. (1993) 201 ITR 17 (Cal.) and in the case of Peerless Consultancy Services (Pvt.) Ltd. (1990) 186 ITR 609 (Cal.) and held that the computer division of the assessee company was an industrial undertaking which satisfied the condition mentioned in section 32A(2)(b)(iii) of the Act.

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8.6 In the case of CIT v. Computerised Accounting And Management Service Pvt.Ltd. (1999) 235 ITR 502, the assessee company was doing business in computerised accounting and management service by using computers. The assessee claimed that it was a new industrial undertaking and was entitled to investment allowance under section 32A and deduction under section 80J of the Act. The High Court of Kerala referred to the decisions in case of Shaw Wallace and Co.Ltd. (1993) 201 ITR 17 (Cal.) wherein the Calcutta High Court had followed the decision in case of CIT vs. Datacons (P.) Ltd. (1985) 155 ITR 166, Union of India Vs. Delhi Cloth and General Mills Co.Ltd., AIR 1963 SC 791 and Narne Tulaman Manufacturers Pvt.Ltd. Vs. Collector of Central Excise (1990) 183 ITR 577 (SC) and held that the nature of the activity carried on by the assessee-company was identical to that carried on by Shaw Wallace and Co.Ltd. The Court agreed with the view taken by the Calcutta High Court in Shaw Wallace and Co.Ltd. that after processing technical and commercial data which are fed into the computer as inputs, the computations and statements that a computer brings out, are entirely different in content from the inputs fed into the computer and, therefore, the assessee-company can be said to be engaged in the production of mechanically prepared information, which is collected from the raw data being fed into the computer. The Court held that the assessee company was not engaged in the manufacture of any office machines and apparatus within the meaning of the Explanation to item 22 in the list in the Eleventh Schedule to the Act. Therefore, the

assessee was an industrial undertaking and was entitled to investment allowance under section 32A and deduction under section 80J of the Act.

8.7 In case of CIT vs. Cochin Refineries Ltd. (2000) 241 ITR 1, one of the questions before Kerala High Court was as to whether the assessee was entitled to investment allowance on the computer installed. The Court followed its earlier decision in case of CIT vs. Computerised Accounting And Management Service P.Ltd. (1999) 235 ITR 502.

8.8 In case of CIT vs. Emirates Commercial Bank Ltd., (2003) 262 ITR 55 (Bom.) on behalf of the revenue, reliance was placed on two decisions of the Bombay High Court viz. CIT vs.R.Shroff Consultants P.Ltd. (1999) 238 ITR 1018 and Insight Diagnostic and Oncological Research Institute Pvt.Ltd. vs. Deputy Commissioner of Income Tax, (2003) 262 ITR 41. On behalf of the assessee reliance was placed upon the decision of the Calcutta High Court in case of CIT vs. Peerless Consultancy Services Pvt.Ltd. (1990)186 ITR 609 (Cal.) which was affirmed by the Apex Court in case of CIT vs.Peerless Consultancy Services Pvt.Ltd. (2001) 248 ITR 178(SC). Reliance was also placed upon the judgment of the Madras High Court in case of CIT vs. Computer Help Services (P.) Ltd. (2000) 246 ITR 722 and the decision of the Kerala High Court in case of CIT vs. Computerised Accounting and Management Service (P.) Ltd. (1999) 235 ITR 502. The Court held as follows :

"It is, no doubt, true that the judgments cited on behalf of the assessee refer to the assessees whose business was confined to data processing for their clients. Today, we have computerised accounting in the banks. In the case of computers, which existed during the relevant assessment year and even today, the operation of the computers in principle remains the same. That, commercial data is fed into the computers as inputs as per the requirement of various customers and the data is processed to get necessary information, computation and statements as outputs. These computers cannot be compared to calculators. Today in matters of investments and security transactions, banks have a front office and back office. Today, under customer services, the banks render several services including providing informaion to customers on the basis of which the customers would make investments. All this is based on the print outs

which constitute information, computations and statements. In the circumstances, we are of the view that all the three conditions of section 32A(2)(b)(iii) are satisfied. Our view is supported by the judgment of the Madras High Court in the case of CIT v. Comp-Help Services (P.) Ltd. [2001] 246 ITR 722 as also by the judgment of the Kerala High Court in the case of CIT v. Computerised Accounting and Management Service Pvt.Ltd.[1999]235 ITR 502. We do not find any merit in the argument of the Department that these two judgments do not apply because, in those cases, the assessee was in the business of data processing. The nature of the services rendered by the bank to its customers does involve the work of data processing. It is on the basis of this data processing that the balance-sheets are prepared. It is on the basis of this data processing done by the computers that the management information reports come out."

8.9 In the case of CIT vs. Vinay Kumar Sigtia, (2003) 262 ITR 686, the question before the Orissa High Court was whether the assessee is entitled to investment allowance under section 32A on data processing machine. The Court referred to various decisions of the Apex Court pertaining to the interpretation of the expression manufacture as well as decision of the Bombay High Court in case of CIT vs.IBM World Trade Corporation (1981) 130 ITR 739 and the decision of the Calcutta High Court in case of CIT vs. Shaw Wallace and Co.Ltd. (1993) 201 ITR 17, and held that the assessee was entitled to investment allowance on data processing machines.

9 Upon perusal of the above referred decisions, it appears that the decision of the Karnataka High Court in the case of CIT v. Datacons (P.)Ltd.,(supra) is the lead judgment on the issue, which was followed by the Calcutta High Court in the case of CIT v. Peerless Consultancy Services (Pvt.) Ltd. (supra). In CIT v. Shaw Wallace and Co. Ltd. the Calcutta High Court followed the decision rendered in the case of CIT v.Peerless Consultancy Services (Pvt.) Ltd.(supra). Against the decision of the Calcutta High Court in the case of CIT v. Peerless Consultancy Services (Pvt.) Ltd. (supra), the Revenue had carried the matter in appeal before the Hon'ble Supreme Court. The Supreme Court rejected the appeal and affirmed the decision of the Calcutta High Court. Thus, it would be relevant to refer to the

aforesaid decisions also.

9.1 In case of CIT vs. Datacons (P.) Ltd. (1985) 155 ITR 66, the assessee was carrying on the activity of processing data furnished by its customers by using IBM Unit Record Machine Computers. The question before the Karnataka High Court was whether the assessee was an industrial company entitled to a concessional rate of taxation. The Court observed that the term "industrial company" has been described as including a company engaged in the processing of goods. The Court discussed at length the activities carried out by the company while processing the data and held as follows :

"It will be clear from these activities that the assessee receives vouchers and statements of accounts from the customer and they are converted into the required balance-sheet, stock account, sales analysis, etc. They are got printed as per the requirements of the customer. In all these activities, the assessee has to play an active role by co-ordinating the activities and collecting the information. Such activities, in our opinion, could fairly fall within the concept of processing of goods, if not manufacture of goods."

The Court observed that the Gujarat High Court in case of CIT vs.Ajay Printery Private Ltd. (1965) 58 ITR 811 had gone a step further and held that the printing balance-sheets, profit and loss accounts, dividend warrants, pamphlets, share certificates, etc., required by companies is a business which consists wholly of "manufacture of goods" within the meaning of clause (ii) of Explanation 2 to section 23A of the Income-tax Act,1922.

9.2 In the case of Commissioner of Income Tax vs. Peerless Consultancy Services (Pvt.) Ltd., (1990) 186 ITR 609, the question before the Calcutta High Court was whether the assessee was a industrial company within meaning of section 2(7)(c) of the Finance Act,1981 and whether the assessee was entitled to investment allowance in respect of a generator installed by it. The assessee was carrying on the business of providing technical and industrial consultancy on the basis of computers and also undertook electronic data processing. The Court followed the decision of of CIT vs. Datacons (P.) Ltd. (supra) and held that the assessee was an industrial company within meaning of Section 2(7)(c) of the Finance Act, and therefore, the assessee was entitled to get investment

allowance in respect of the generator installed by it.

9.3 In case of Commissioner of Income Tax vs. Shaw Wallace and Co.Ltd. (1993) 201 ITR 17, the Calcutta High Court referred to the decisions in the case of Addl.CIT v.A.Mukherjee and Co.(P.)Ltd. (1978) 113 ITR 718 (Cal.), CIT vs.Ajay Printery (Pvt.) Ltd. (1965) 58 ITR 811 (Guj.), CIT v. Tiecicon (P.)Ltd. (1987) 168 ITR 744 (SC), CIT v. International Computers Ltd.(supra), CIT v. IBM World Trade Corporation (supra), CIT v. IMB World Trade Corporation (1986) 161 ITR 673 (Bom.) as well as the case of CIT v. Peerless Consultancy Services (Pvt.) Ltd. (supra).

The Court observed that :

"Investment allowance is admissible in respect of machinery or plant installed in any industrial undertaking for the purpose of business of construction, manufacture or production of any article or thing not being an article or thing specified in the list in the Eleventh Schedule. There is no dispute that "data-processing" or "computer" is not mentioned in the Eleventh Schedule. If, as held by the Division Bench in Peerless Consultancy Services (Pvt.) Ltd. (1990) 186 ITR 609 (Cal.), the assessee-company is an industrial company, there is no reason why such a company will not be entitled to the benefit of the investment allowance. Investment allowance will not be admissible in respect of office appliances. In our view, having regard to the nature and function of the computer and the data processing system, it cannot be said that they are office appliances. An industrial company is a company engaged in the manufacture or processing of goods. "Data-processing" means the converting of raw data to machine-readable form and its subsequent processing (as storing, updating, combining, rearranging or printing out) by a computer. "Computer" means "one that computes : specifically a programmable electronic device that can store, retrieve, and process data". There cannot be any doubt that raw data cannot be equated with the result derived. It is different in form and substance."

The Court, therefore, held that the computer division is an industrial undertaking which satisfies the conditions mentioned in section 32A(2)(b)(iii) of the Act.

9.4 In case of CIT v. Comp-Help Services P.Ltd. (2000)246 ITR 722 (Mad.), the assessee was engaged in the business of processing data with computers and the preparation of the balance-sheets and financial accounts, etc., for its customers. The assessee claimed investment allowance for the computers installed for the purpose of its business. The Court observed that when the data is processed with the aid of computers and the processing involves complicated steps which can only be performed with speed in a computer and the end-product is the analysis and presentation of data in the desired format such as a balance-sheet, it can be said in broad term that there is production. The Court observed that it was pointed out by the Supreme Court in the case of CIT v.N.C.Budharaja and Co. (1993) 204 ITR 412 that the word "production" has a wider connotation than the word "manufacture". While every manufacture can be regarded as production, every production need not amount to manufacture. It was further observed that the word "production" or "produce", when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture and that it takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods. The Court held that the word "production" in section 32A(2) therefore comprehends processing activity and the word "article" in that provision includes movables. The data processing computers involve processing and therefore capable of being regarded as part of the process or production. The balance-sheets, sales analysis, statements, etc., obtained as a result of processing are movables and are different from the data that was initially fed into the computer though based upon the data so fed in. The use to which the end-product is put is different from the one to which the raw data is put at the time it is fed into a computer. The end-products obtained as a result of data processing such as balance-sheets, etc., are therefore capable of being regarded as new articles. The Court observed that the term "Industry" as used in section 32A refers to the industries which are engaged in the manufacture or production of goods or articles or things. THe Court held that the balance-sheets and other documents obtained as a result of the operation of the data processing system being articles which are obtained by processing, amounts to production, and therefore, the data processing company must be held to be an industrial company engaged in the production of articles.

The Court referred to the decision of the Bombay High Court in case of CIT v. I.B.M.World Trade Corporation (supra), the decision of the Karnataka High Court in case of CIT v. Datacons (P.) Ltd. (supra) as well as the decision of the Calcutta High Court in case of CIT v. Peerless Consultancy Services (Pvt.) Ltd.(supra) and held in favour of the assessee.

9.5 The decision of the Calcutta High Court in the case of CIT v.Peerless Consultancy Services (Pvt.) Ltd. (supra) was carried in appeal before the Hon'ble Supreme Court. The attention of the Supreme Court was drawn to the decisions of the Calcutta High Court in the case of CIT v. Shaw Wallace and CO. Ltd. (supra) as well as the decision of the Karnataka High Court in the case of CIT v. Datacons (P.) Ltd. (supra). The Supreme Court in its decision reported in (2001) 248 ITR 178, held as follows:

"Learned counsel for the Revenue has been unable to show us any judgment of a court of this country or abroad which takes the view that the processing of data is not the processing of goods. He has sought to take us back to the primary material; it is not the function of this court to assess such primary material. The primary material, if any, should have been placed before the income-tax authorities or the Tribunal."

10 In view of the abovementioned case law, it is apparent that the issue involved in the present case is no longer res integra . The decision of the Calcutta High Court, in the case of CIT v. Peerless Consultancy Services (Pvt.) Ltd. has been affirmed by the Hon'ble Supreme Court. Moreover, the only decision relied upon by the learned Counsel for the revenue is the decision of the Bombay High Court in the case of CIT v. R.Shroff Consultants P.Ltd. In the said decision the Court had placed reliance upon the decision of the Supreme Court in the case of CIT v.N.C.Budharaja. In CIT v.Comp-Help Service P.Ltd.(supra) the Madras High Court had placed reliance upon the same decision of the Supreme Court (CIT v.N.C.Budharaja) and held that a data processing company is an industrial company engaged in the production of articles. In the case of CIT v.Emirates Commercial Bank Ltd.,(supra) the decision of both the aforesaid cases i.e., CIT v.R.Shroff Consultants P.Ltd. as well as CIT v.Comp-Help Service P.Ltd. were cited. However, the Bombay High Court followed the decision of the Madras High Court in the case of CIT v. Comp-Help Service

P.Ltd. and held that the assessee Bank was entitled to deduction under section 32A of the Act in respect of computers installed in the office premises.

11 The analysis of the entire case law makes it clear that the test for determination as to whether machinery/apparatus can be termed as a plant or not would primarily depend upon the function to which the said machinery/apparatus is put, regardless of location where the machinery/apparatus is situated. This is, over and above the test of the end product being an entirely different commercial commodity vis-a-vis the input. Therefore, in case of computer system or data processing system, the inputs which are fed into are entirely different, in a different form with different indicators. As against that, the end product, viz. balancesheets, various accounts, statements, analysis etc., which emerge by way of print outs are distinct and different from the inputs, in as much as what comes out is having different connotation and use. Thus, the activity of data processing through the use of computers is one which would amount to business of manufacture or production of articles or things and the unit which undertakes such computer services for other concerns would be an industrial undertaking.

12. In the circumstances, there is no error of law in the order of the Tribunal in holding that the assessee company which provides computer services to other concerns was an industrial undertaking engaged in the business of manufacture or production and was thus eligible for investment allowance under section 32A of the Act on the cost of computer.

13. In the result, the question referred to the Court for its opinion is answered in the affirmative i.e. in favour of the assessee and against the revenue.

14. The reference stands disposed of accordingly with no order as to costs.

(D.A.Mehta, J)

(H.N.Devani,J)

m.m.bhatt